PETITIONER:
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

Vs.

RESPONDENT:
M/S. PRICE WATERHOUSE & ANR.

DATE OF JUDGMENT: 11/07/1997

BENCH:
K. RAMASWAMY, G. B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

K. Ramaswamy, J.

Leave granted.

This appeal by special leave arises from the Judgment and Order of the High Court of Delhi, made on September 12, 1996 in Civil Writ No. 676 of 1994.

The Export-Import Bank of India (for short, the 'EXIM BANK) commissioned the services of the respondent firm to assist it in the preparation of a book entitled "India - Your Software Opportunity". The need for such booklet was explained by the EXIM Bank at the inside cover of the booklet which reads as under :

"The information set out in this publication, meant for general guidance, has been compiled by Price Waterhouse (India) at the instance of the Export - Import Bank of India (EXIM BANK). While the booklet is not intended to be an exhaustive Treatment of the subject, the information contained is based on sources and interpretations of applicable Legal provisions believed to be reliable for which, however, both Exim Bank and Price Waterhouse (India) are unable to assume any Liability. For further information, clarifications and assistance, interested parties may communicate with Price Waterhouse offices located at:
1102/1107, Raheja Chambers, Nariman Point, Bombay - 400021.
Telephones : 235138/2870466. Talex : (011) 5791.
B-102, Himalaya House, 23, Kasturba Gandhi Marg, New Delhi - 110001.
Telephones : 3313591/3312656. Telex : (031) 63070."

The appellant-Council had at treated the said

publication as amounting to solicitation of professional attainments, violating clauses (6) and (7) of Part I of First Schedule to the Chartered Accountants Act, 1949 (for short, the 'Act') and called upon the respondent by proceedings dated December 13, 1990 to send the name of the members who were answerable to the charge of misconduct. On January 26, 1991, respondent No.2, Shri Amal Ganguli, partner of the first respondent filed his written statement. On consideration thereof, by proceedings dated 5-6th August, 1991, the Council prima facie opined that the second respondent and referred the case to the Disciplinary Committee for enquiry and report. The Disciplinary Committee submitted its report on January 16, 1993. The Disciplinary Committee sent a copy of the report to the second respondent informing him that if he so desired, he may send his representation against the said report within 30 days. By further letter dated July 6, 1993, it was communicated to him that the report of the Disciplinary Committee would be considered by the Council in its meeting from August 5 to 7, 1993 and that he can appear in person or through a member. On August 5, 1993, he sent a letter stating that the report of the Disciplinary Authority may be accepted. On the even date, the Council, after considering the report dated January 16, 1993 and the written submissions of the second respondent dated 5, 1993 came to the conclusion that further enquiry was necessary and decided that the further enquiry should be made by the Disciplinary Committee. It was communicated to him by letter dated December 21, 1993. On receipt thereof, the from respondent on February 2, 1994, filed the above writ petition in the High Court challenging the power of the Council to refer the matter to Disciplinary Committee for further enquiry. The High Court in the impugned judgment opined that by operation of the Regulation 16 made under the Act, the Council was devoid of the power to direct the Disciplinary Committee to hold further enquiry. Accordingly, it quashed the letter dated December 21, 1993 and allowed the writ petition. Thus, this appeal by special leave.

Shri Vaidyanathan, learned counsel appearing for the appellant, contends that the view taken by the Division Bench is not correct in law. Section 21 of the Act read with Regulation 16(3) and (4) gives power to the Council to direct the Disciplinary Committee, which is a fact-finding committee, to make further enquiry and to submit a report. The power under Section 21(2) of the Act should be used only after the Council reaches the conclusion that the second respondent was not guilty of professional misconduct of other misconduct. The council would take further action only after consideration of further report to be submitted by the Disciplinary Committee. The view of the High Court, therefore, is incorrect. If the view of the High Court is upheld, the primacy would be given to the report of the Disciplinary Committee denuding the power to the Council to maintain discipline among the members of the Institute which is deleterious to maintain discipline among its members. Shri P.P. Rao, learned senior counsel appearing for the respondents, on the other hand, contends that the provisions, being penal in nature, require to be construed strictly. The Disciplinary Committee is a high-power committee constituted under the Act. If the Disciplinary Committee finds that the guilt of misconduct has not been proved, the Council is left with no option but to accept the finding of no-guilt and record the same under sub-section (2) of Section 21. In case the finding of the Disciplinary Committee that the member is guilty is not acceptable to the

Council, only then, the Council has power to remit to the Disciplinary Committee for further enquiry and the operation of Regulation 16(4) would come into play. In that perspective, on a harmonious interpretation of all the provisions, the finding of the high power committee, namely, the Disciplinary Committee, should always be given primacy and serious consideration by the Council before accepting or calling for further report. From this perspective, the view of the High Court is correct in law. He also contends that the Council has not applied its mind to the imputation of misconduct as reflected in paragraph 10 of the Special Leave Petition. Therefore, it has not applied its mind and mechanically acted upon to refer to the Disciplinary Committee for further enquiry. A reading of the publication itself does not posit of any professional misconduct or other misconduct to be dealt with under the Act. Therefore, there is no case made out warranting interference under Article 136 of the Constitution.

Having regard to the respective contentions, the question that arises for consideration is: whether the view taken by the High Court is correct in law? The High Court in the impugned judgment has held thus:

> "The scheme of Regulation 16 is clear and unambiguous that in case of disciplinary committee concluding that a member is not guilty, it is the end of the matter and the disciplinary proceedings have to be dropped by the Council. In case the report of the disciplinary committee finds the member guilty, another opportunity is granted to the member to make representation and on consideration of the report and the representation, if any, the Council can cause further enquiry to be held. The finding of misconduct is a serious matter for a member and casts a stigma on him and, therefore, it appears that Council has been empowered to get a further enquiry conduct on being satisfied on the representation of a member or otherwise even after receipt of a report from the disciplinary committee to the effect that a member is guilty of misconduct. There is, however, no such power when disciplinary committee exonerates a member since. Regulation 16 does not permit further enquiry to be held by the disciplinary committee when it has concluded that the member is not guilty of any professional or other misconduct. When we compare old Regulation 14 with the present Regulation 16, we find a clear departure in the language of Regulation 16. Regulation 14 was wider in its scope and ambit. Under the said Regulation it was permissible to cause further enquiry being held even where the

> report of the disciplinary committee was that the member is not guilty of any professional or other misconduct. Regulation 16 is narrow in its scope and ambit when compared to the old Regulation 14. The Regulation cannot be without any purpose."

On that basis, it was held that the report of the Disciplinary Committee being that the respondent was not guilty of any professional misconduct within the meaning of clauses (6) and (7) of Part I of the First Schedule of the Act, the Council had no power to direct Disciplinary Committee to hold further enquiry. With a view to appreciate the correctness of the above view, it is necessary to look into the relevant provisions of the Act and the Regulations made thereunder.

Section 2(b) defines 'Chartered Accountant' to mean a person who is a member of the Institute. Section 2(c) defines 'Council' to mean the Council of the Institute. Under Section 2(e) 'Institute' means the Institute of Chartered Accountants of India constituted under the Act. 'Registered Accountant' is define under Section 2(h) to mean any person who has been enrolled on the register of Accountants maintained by the Central Government under the Auditor's Certificates Rules, 1932. A member of the Institute shall be deemed "to be in practice", when individually or in partnership with Chartered Accountants in practice, he, in consideration of remuneration received or to be received, as postulated by sub-section (2) thereof, engages himself in the practice of accountancy or offers to perform or performs services involving the auditing or verification of financial transactions, books, accounts or records, or the preparation, verification or certification of financial accounting and related statements or holds himself out to the public as an accountant; or renders professional services or assistance in or about matters of principle or detail relating to accounting procedure or the recording presentation or certification of financial facts or date or renders such other services as, in the opinion of the Council, are or may be rendered by a chartered accountant in practice and the words 'to be in practice' with their grammatical variations and cognate expressions shall be construed accordingly. The explanation is not relevant for the purpose, hence omitted. Section 5 deals with "Fellows and Associates" of the Institute. Section 6 deals with certificate of practice. Section 7 deals with "Members to be known as Chartered Accountants". Section 9 deals with the "Constitution of the Council of the Institute" for the management of the affairs of the Institute and for discharging the functions assigned to it under the Act, the details thereof are not relevant for the purpose of this case. The "duration and dissolution of the Council" is dealt with under Section 14. Section 19 in Chapter IV deals with the "Register" of Members, Chapter V with the heading 'Misconduct" which comprise. Sections 21, 22 and 22A. Section 21 is relevant for the purpose of this case which reads as under:

> "21. Procedure in inquiries relating to misconduct of members of Institute
>
> (1) Where on receipt of information by, or of a complaint made to it, the Council is prima facie of opinion that any member of

the Institute has been guilty of any professional or other misconduct, the Council shall refer the case to the Disciplinary Committee shall thereupon hold such enquiry and in such manner as may be prescribed, and shall report the result of its inquiry to the Council.

(2) If on receipt of such report the Council finds that the member of the Institute is not guilty of any professional or other misconduct, it shall record its finding accordingly and direct that the proceedings shall be filed or the complaint shall be dismissed, as the case may be.

(3) If on receipt of such report the Council finds that the member of the Institute is guilty of any professional or other misconduct, it shall record a finding accordingly and shall proceed in the manner laid down in the succeeding sub-sections.

(4) Where the finding is that a member of the Institute has been guilty of a professional misconduct specified in the First Schedule, the Council shall afford to the member of an opportunity of being heard before orders are passed against him on the case, and may thereafter make any of the following orders, namely:-

(a) reprimand the member ;

(b) remove the name of the member from the Register for such period, not exceeding five years, as the Council thinks fit :

Provided that where it appears to the Council that the case is one in which the name of the member ought to be removed from the Register for a period exceeding five years or permanently, it shall not make any order referred to in clause (a) or clause (b), but shall forward the case to the High Court with its recommendations thereon.

(5) Where the misconduct in respect of which the Council has found any member of the institute guilty is misconduct other than any such misconduct as is referred to in sub-section (4), it shall forward the case to the High Court with its recommendations thereon.

(6) On receipt of any case under sub-section (4) or sub-section (5), the High Court shall fix a date for the hearing of the case and shall cause notice of the date so fixed to be given to the member of the

Institute concerned, the Council and to the Central Government, and shall afford such member, and the Central Government an opportunity of being heard, and may thereafter make any of the following orders, namely :-

(a) direct that the proceedings be filed, or dismiss the complaint, as the case may be;

(b) reprimand the member;

(c) remove him from membership of the Institute either permanently or for such period as the High Court thinks fit;

(d) refer the case to the Council for further inquiry and report.

(7) Where it appears to the High Court that the transfer of any case pending before it to another High Court will promote the ends of justice or tend to the general convenience of the parties, it may so transfer the case, subject to such conditions, if any, as it thinks fit to impose, and the High Court to which such case is transferred shall deal with it as if the case had been forwarded to it by the Council.

Explanation I:- In this section "High Court" means the highest civil court of appeal, not including the Supreme Court, exercising jurisdiction in the area in which the person whose conduct is being inquired into carried on business, or has his principal place of business at the commencement of the inquiry:

Provided that where the case relating to two or more members of the Institute have to be forwarded by the Council to different High Courts, the Central Government shall, having regard to the ends of justice and the general convenience of the parties, determine which of the High Courts to the exclusion of others shall hear the cases against all the members.

Explanation II:- For the purpose of this section "member of the Institute" includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

(8) For the purposes of any inquiry under this section, the Council and the Disciplinary Committee shall have the same powers as are vested in a civil

court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of any document; and

(c) receiving evidence on affidavit.

"Professional misconduct" is defined in Section 22, which reads as under ;

"22. Professional misconduct defined

For the purposes of this Act, the expression "professional misconduct" shall be deemed to include any act or omission specified in any of eh Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Council under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances."

The procedure to enquire into the misconduct on the part of the members of the Institute is dealt with in Section 21. Sub-sections (1), (2), (3), (4) and (5) are relevant for the purpose of this case.

By exercise of the power under Section 30, the Council is empowered to make Regulations to carry out the object of the Act. Sub-section (2) postulates that in particular and without prejudice to the generality of the foregoing power, "such regulations may provide for all or any of the following matters". Section 30(2) (s) speaks of "the exercise of disciplinary powers conferred by the Act" and Section 30(2) (l) of "any other matter which is requited to be or may be prescribed under the Act". Regulation 16 which was amended in 1988 read as under :

"Report of the Disciplinary Committee.

(1) The Disciplinary Committee shall submit its report to the Council.

(2) Where the finding of the Disciplinary Committee is that the respondent is guilty of professional and or other misconduct, a copy of the report of the Disciplinary Committee shall be furnished to the respondent and he shall be given the opportunity of marking a representation in writing to the Council.

(3) The Council shall consider the report of the Disciplinary Committee along with the representation in writing of the respondent, if any, and if, in its opinion, a further enquiry is necessary, shall cause such further enquiry to be made whereupon a

further enquiry to be made whereupon a further report shall be submitted by the Disciplinary Committee.

(4) The Council shall, on the consideration of the report and the further report, if any, and the representation in writing of the respondent, if any, record its findings.

Provided that if the report of the Disciplinary Committee is that the respondent is not guilty of any professional or other misconduct, the Council shall not record its findings contrary to the report of the Disciplinary Committee.

(5) The finding of the Council shall be communicated to the complainant and the respondent."

Section 21 read with Regulation 16 would indicate that where the Council, upon receipt of information by, or of a complaint made to it, is prima facie of opinion that any member of the Institute has been guilty of any professional or other misconduct defined under Section 22 of the Act, it is enjoined to refer the case to the Disciplinary Committee. The Disciplinary Committee shall, thereupon, hold such enquiry and in such a manner as may be prescribed and shall report the result of its enquiry to the Council. If on receipt of such report, the Council finds that the member of the institution is not guilty of any professional or other misconduct, it shall record a finding under sub-section (2) thereof and accordingly direct that the proceedings shall be filed or complaint shall be dismissed, as the case may be.

As seen earlier, under Regulation 16(1), it shall be the duty of the Disciplinary Committee to submit its report to the Council under clause (1) thereof. In case, the finding of guilt of a member of professional misconduct/other misconduct is reported by the Disciplinary Committee, a copy thereof shall be furnished to the delinquent member and he shall be given an opportunity to make representation in writing to the Council. This would be done under sub-regulation (2) of Regulation 16. Thereon, by operation of sub-regulation (3), the Council shall consider the report of the Disciplinary Committee along with the representation in writing of the delinquent member, if any. If on consideration thereof, the Council is of the opinion that the further enquiry is necessary, it shall direct such further enquiry to be made, whereupon a further report shall be submitted by the Disciplinary Committee. Sub-regulation (4) of Regulation 16 envisages that the Council shall, on the consideration of the report and the further report, if any, and the representation in writing of the respondent record its findings. Under the proviso thereto, if the report of the Disciplinary Committee is that the respondent is not guilty of any professional or other misconduct, the Council shall not record its findings contrary to the report of the Disciplinary Committee. Sub-section (3) also envisages that if on receipt of such report the Council finds that the member of the Institute is guilty of any professional or other misconduct, it shall record a finding accordingly and shall proceed in the manner laid down in the succeeding sub-sections, namely, sub-section (4), (5) and (6) in awarding appropriate punishment or may refer to the High Court, under sub-section (6), for award of higher

penalties which the High Court may deal with under sub-section (7) thereof.

A combined reading of the above statutory provisions would indicate that in case the Council finds that the report of the Disciplinary Committee recording "no-guilt" is not correct or relevant material was not considered by the Disciplinary Committee, the Council has the power the call further report from the Disciplinary Committee. Though prima facie the arguments of Shri P.P. Rao is attractive, on deeper probe, it is difficult to give acceptance to the contention that the report of "no-guilt" by the Disciplinary Committee should be given primacy as it would deplete the content of the power to maintain discipline among the members of the power to maintain discipline among the members of the Institute. The ultimate control over conduct of the members is by the Council. The Disciplinary Committee is a fact-finding body which is a body subordinate to the Council as a fact-finding body which is a body subordinate to the Council as a fact-finding authority. If its finding of guilt or non-guilt receives finality, it denudes the Council of the power to direct further appropriate enquiry into the professional or other misconduct not adequately dealt with by the Disciplinary Committee. Similarly, the Council would be disabled to exercise effective vigil and supervision over the professional or other misconduct of the members of the Institute. The Parliament has invested that power with the Council and the construction suggested allows the tail to wag while the controlling body, the council lamentably look at it. Such a construction would be deleterious to the maintenance of discipline or the professional conduct on the part of the members of the Institute or Associate Members of the Institute, as the case may be. It is true that the discipline sought to be maintained is penal in nature; nonetheless, maintenance of discipline or professional or other conduct of the members or associate members is salutary and paramount to maintain public confidence in the members of the Institute and to inculcate sense of discipline and excellence in the performance of the functions as member of the Institute or associate member of the Institute, as the case may be. The contrary view would easily defeat the purpose of the Act and the object behind the regulatory measures envisaged in Section 21 of the Act. Regulation 16 is only an enabling provision to conduct by the Disciplinary Committee which is a fact-finding subordinate delegated body whose finding is not conclusive on the non-guilt of the professional or other misconduct of the member of the Institute. A combined reading of relevant provisions in Section 21 and Regulation 16 does indicate that the recording of a finding of guilt or non-guilt by the Council is mandatory to take further action or to dismiss the complaint or for further process. The Council is required to consider independently the explanation submitted by the member and the evidence adduced in the enquiry before the Disciplinary Committee and the report of the Disciplinary Committee. It provides an in-built mechanism under which the Council itself is required to examine the case of professional or other misconduct of a member of the Institute or associate member, taking the aid of the report submitted by the Disciplinary Committee, the evidence adduced before the Committee and the explanation offered by the delinquent member. Entire material constitutes the record of the proceedings before the Council to reach a finding whether or not the delinquent member committed professional or other misconduct, Otherwise, the primacy accorded to the report of the Disciplinary Committee

attains finality, denuding the Council of the power of discipline over the member of the Institute; that would render deleterious effect on the maintenance of discipline among the members or associate members of the Institute. In this behalf, it is necessary to consider the view of this Court prior to the amendment of the Regulations in 1988. In Institute of Chartered Accountants of India vs. L.K. Ratna & Ors. [(1986) 4 SCC 537], this Court, in paragraph 11, summed up the legal position as under :

> "It is apparent that in the scheme incorporated in Section 21 of the Act there are separate functionaries, the Disciplinary Committee, the Council and, in certain cases, the High Court. The controlling authority is the Council, which is only logical for the Council is the governing body of the Institute. When the Council receives information or a complaint alleging that a member of the Institute is guilty of misconduct, and it is prima facie of opinion that there is substance in the Disciplinary Committee. The Disciplinary Committee plays a subordinate role. It conducts an inquiry into the allegations. Since the inquiry is into allegations of misconduct by the member, it possesses the character of a quasi-judicial proceeding. The Disciplinary Committee thereafter submits a report of the result of the inquiry to the Council. The Disciplinary Committee is merely a Committee of the Institute with a function specifically limited by the provisions of the Act. As a subordinate body, it reports of the Council, the governing body. The report will contain a statement of the allegations, the defence entered by the member, a record of the evidence and the conclusions are the conclusions of the Committee. They are tentative only. They cannot be regarded as 'findings'. The Disciplinary Committee is not vested by the Act with power to render any findings. It is the Council which is empowered to find whether the member is guilty of misconduct. Both Section 21(2) and Section 21(3) are clear as to that. If on receipt of the report the Council finds that the member is not guilty of misconduct, Section 21(3) requites it to record a finding accordingly, and thereafter to proceed in the manner laid down in the succeeding sub-sections. So, the finding by the Council is the determinative decision as to the

> guilt of the member, and because it is determinative the Act requires it to be recorded. A responsibility so grave as the determination that a member is guilty of misconduct, and the recording of that finding, has been specifically assigned by the Act to the governing body, the Council. It is also apparent that it is only upon a finding being recorded by the Council that the Act moves forward to the final stage of penalisation. The recording of the finding by the Council is the jurisdictional springboard for the penalty proceeding which follows."

And in paragraph 13, it was held that "at this point, it is necessary to advert to the fundamental character of the power conferred on the Council. The Council is empowered to find a member guilty of misconduct. The penalty which follows is so harsh that it may result in the removal from the Register of members for substantial number of years." In that case, the question was: whether the delinquent member was entitled to hearing before the delinquent member was entitled to a hearing before the Council reached the conclusion of the guilt of professional misconduct. In that perspective, this Court read into it the principle of natural justice and held that an opportunity of hearing is a facet of fair procedure and accordingly the delinquent member was entitled to a hearing before the Council, prior to the Council recorded the finding of guilt of professional misconduct. Here, it may be illustrated that the effect of giving primacy to the finding recorded by the Disciplinary Committee is to make it conclusive. Take for instance, where the Committee records a finding of guilt of professional misconduct. When the matter comes up before the Council and the Council finds that the evidence adduced before the Disciplinary Committee in proof of professional or other misconduct is not established, then the Committee will not have any power to record a finding except to call for a further finding from the Disciplinary Committee in that behalf which does not appear to be warranted. If the Council reaches the conclusion that professional or other misconduct was not proved, without calling for any further finding, it can straightaway exonerate the delinquent member of the charge of professional or other misconduct and would drop the action or dismiss the complaint. On the other hand, if the finding of not guilt recorded by the Disciplinary Committee is not consistent with the evidence on record, then the Disciplinary Committee will be denuded of the power to call for further report, obviously, rendering Regulation 16(3) as surplusage. It is settled rule of interpretation that all the provisions would be read together harmoniously so as to give effect to all the provisions as a consistent whole rendering no part of the provisions as surplusage. Otherwise, by process of interpretation, a part of the provision or a clause would be rendered otiose. Keeping this legal principles, perspectives, practical effect and contents of the power of the Disciplinary Committee or Council in the backdrop of our above consideration, we are of the considered view that the view expressed by the High Court is clearly incorrect and it would defeat the object of the Act of maintaining professional standards of the professional conduct or other conduct consistent with the

dignity of the profession of the accountants. We, therefore, hold that the Council has the power to call for further report from the Disciplinary Committee on non-guilt of the professional or other misconduct of the respondent. In this backdrop, the proviso to sub-regulation (4) of Regulation 16 becomes relevant. In case, on the second occasion, the report of the Disciplinary Committee still holds the delinquent member not guilt holds the delinquent member not guilty, there is no option left to the Council except, by operation of proviso to sub-regulation (4) of Regulation 16 read with Section 21(2), as the Council is enjoined, to record finding of no guilt since the power of calling for further report would stand exhausted. Any other view, in our considered opinion, would defeat the object of the Act.

The contention of Shri Rao that the Council had not applied its mind to the facts of this case is not correct. In fact, the proceedings dated December 21, 1993, viz., "on consideration of the report of Disciplinary Committee and your written statement, the Council decided that further enquiry in the case was necessary to be made by the Disciplinary Committee keeping in view the following issues:

1. What were the terms and details of engagement accepted by your firm from EXIM Bank relating to publication of booklet entitled, "India - Your Software Opportunity"?
2. Were the contents of 'insertion' in the booklet containing your firms name and address in accordance with the engagement accepted?
3. Whether you/your firm had rendered assistance, as offered in the 'insertion', to the "interested parties"?
4. Whether you/your firm had communicated with the "interested parties" for rendering information, clarifications and assistance?
5. Whether you/your firm's communications with the "interested parties" were limited to providing information and clarifications on the matters contained in the booklet?
6. Nature of assistance provided by you/your firm to the "interested parties"?
7. Whether the remuneration accepted by you/your firm from the EXIM Bank included the jobs of rendering information, clarifications and assistance to the "interested parties"?
8. Whether you/your firm had accepted remuneration from the "interested parties" for rendering information, clarifications and assistance separately?
9. Whether you/your firm had received any professional work from the "interested parties" communicated or contracted pursuant to publication of the booklet or

from their associates?

10. Whether the communications effected by you/your firm with the "interested parties" were either on your or your firm's letter-head? If so, the manner and style of signing the letters."

do indicate the active application of its mind and consideration to various aspects mentioned in the questionnaire based thereon and, therefore, it is not a case of mechanical incantation of the provisions in sub-regulation (3) of Regulation 16. It is true that in para 10 of the Special Leave Petition, they have mentioned that what they are required to consider is the report and not the evidence adduced before the Disciplinary Committee is only a mistaken impression of the Council as projected, but by reason thereof, it is difficult to conclude that the Council has not applied its mind to the relevant facts before calling for further report.

Though Shri Rao sought to impress upon us that on a reading of the report originally taken note of from the cover of the booklet of the EXIM Bank, it does not constitute professional misconduct. We decline to go into that question for the reason that any finding recorded by this Court would adversely affect either party. Therefore, we do not propose to express any opinion in that behalf. It is for the Council to consider the same, after the receipt of further report from the Disciplinary Committee. We accordingly allow the appeal, set aside the judgment of the High Court and uphold the direction issued by the Council to Disciplinary Committee to make further enquiry and to submit a further report in that behalf.

The appeal is accordingly allowed but, in the circumstances, without costs.